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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 VINSON WHITE,

Case No.: 3:18-cv-00472-LRH-WGC

9 Petitioner

10 v.

ORDER

11 WILLIAM GITTERE, et al.,

12 Respondents

13
14 Petitioner Vinson White has submitted a 28 U.S.C. § 2254 habeas corpus petition and has
15 now paid the filing fee (*see* ECF Nos. 1-1, 5). The court has reviewed the petition pursuant to
16 Habeas Rule 4, and it shall be docketed and served on respondents.

17 A petition for federal habeas corpus should include all claims for relief of which
18 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever
19 barred from seeking federal habeas relief upon that claim. See 28 U.S.C. §2254(b) (successive
20 petitions). If petitioner is aware of any claim not included in his petition, he should notify the
21 court of that as soon as possible, perhaps by means of a motion to amend his petition to add the
22 claim.

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1 White has also submitted a motion for appointment of counsel (ECF No. 1-2). There is
2 no constitutional right to appointed counsel for a federal habeas corpus proceeding.
3 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th
4 Cir.1993). The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801
5 F.2d 1191, 1196 (9th Cir.1986), cert. denied, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d
6 1228, 1234 (9th Cir.), cert. denied, 469 U.S. 838 (1984). However, counsel must be appointed if
7 the complexities of the case are such that denial of counsel would amount to a denial of due
8 process, and where the petitioner is a person of such limited education as to be incapable of fairly
9 presenting his claims. See *Chaney*, 801 F.2d at 1196; see also *Hawkins v. Bennett*, 423 F.2d 948
10 (8th Cir.1970). Here, White's petition clearly presents the issues that he wishes to raise, and the
11 legal issues do not appear to be complex. Therefore, counsel is not justified. White's motion is
12 denied.

13 **IT IS THEREFORE ORDERED** that the Clerk **shall file and ELECTRONICALLY**
14 **SERVE** the petition (ECF No. 1-1) on the respondents.

15 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
16 Attorney General, as counsel for respondents.

17 **IT IS FURTHER ORDERED** that respondents shall file a response to the petition,
18 including potentially by motion to dismiss, within **90 days** of service of the petition, with any
19 requests for relief by petitioner by motion otherwise being subject to the normal briefing
20 schedule under the local rules. Any response filed shall comply with the remaining provisions
21 below, which are entered pursuant to Habeas Rule 5.

22 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents in this
23 case shall be raised together in a single consolidated motion to dismiss. In other words, the court

1 does not wish to address any procedural defenses raised herein either *in seriatum* fashion in
2 multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted
3 from such motion to dismiss will be subject to potential waiver. Respondents shall not file a
4 response in this case that consolidates their procedural defenses, if any, with their response on
5 the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
6 lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2):
7 (a) they shall do so within the single motion to dismiss not in the answer; and (b) they shall
8 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
9 *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
10 including exhaustion, shall be included with the merits in an answer. All procedural defenses,
11 including exhaustion, instead must be raised by motion to dismiss.

12 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents shall
13 specifically cite to and address the applicable state court written decision and state court record
14 materials, if any, regarding each claim within the response as to that claim.

15 **IT IS FURTHER ORDERED** that petitioner shall have **45 days** from service of the
16 answer, motion to dismiss, or other response to file a reply or opposition, with any other requests
17 for relief by respondents by motion otherwise being subject to the normal briefing schedule
18 under the local rules.

19 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed herein
20 by either petitioner or respondents shall be filed with a separate index of exhibits identifying the
21 exhibits by number. The CM/ECF attachments that are filed further shall be identified by the
22 number or numbers of the exhibits in the attachment.

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1 **IT IS FURTHER ORDERED** that the parties SHALL SEND paper courtesy copies of
2 all exhibits to Clerk of Court, Attn: Staff Attorney, 400 S. Virginia St., Reno, NV, 89501.
3 Additionally, in the future, all parties shall provide courtesy copies of any additional exhibits
4 submitted to the court in this case, in the manner described above.

5 **IT IS FURTHER ORDERED** that the Clerk **SHALL DETACH** and **FILE** petitioner's
6 motion for appointment of counsel (ECF No. 1-2).

7 IT IS FURTHER ORDERED that the motion for appointment of counsel is DENIED.

8 DATED this 2nd day of January, 2019.

LARRY R. HICKS
UNITED STATES DISTRICT JUDGE